



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

Docket Number USCG-2018-0154

RIN 1625-AA08

Special Local Regulation; USS PORTLAND Commissioning, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary regulated area for certain waters of the Willamette River. This action is necessary to provide for the safety of life on these navigable waters near Port of Portland Terminal 2, Portland, OR during a naval vessel commissioning ceremony on April 14-23, 2018. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0154 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Laura Springer, MSU Portland Waterways; 503-240-9319, email msupdxwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On April 14-23, 2018 the U.S. Navy will be conducting ceremonial activities for the commissioning of the USS PORTLAND. The commissioning activities will take place at the Port of Portland Terminal 2, with a regulated area extending approximately 500 yards on each side of the naval vessel on the Willamette River in Portland, OR. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard proposes to temporarily restrict vessel traffic during the commissioning activities.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the regulated area, during, and after the scheduled event and to prevent any disruption to the commissioning ceremonies. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a regulated area from 11:59 p.m. on April 14, 2018 to 11:59 p.m. on April 23, 2018. The regulated area would cover all navigable waters at Port of Portland Terminal 2 on the Willamette River. Specifically, the navigable

waters bounded by the following points: 45° 33.34' N, 122° 42.34' W; 45° 33.12' N, 122° 42.51' W; 45° 32.71' N, 122° 41.37' W; and 45° 32.58' N, 122° 41.54' W. The duration of the regulated area is intended to ensure the safety of vessels, bystanders, and the navigable waters and to prevent any disruption of the events associated with the commissioning ceremony of the USS PORTLAND. The Coast Guard, at its discretion, would allow the passage of affected vessels. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the regulated area. Although this proposal would prevent traffic from transiting portions

of the Willamette River, the effect of this regulation would not be significant due to the limited duration that the regulated area would be in effect and would allow waterway users to enter or transit through the zone when deemed safe by the on-scene patrol commander. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting less than 10 days that would limit entry within approximately 500 yards of the USS PORTLAND. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Memorandum for Record supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100-- SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05-1.

2. Add § 100.T13-0154 to read as follows:

§ 100.T13-0154 Special Local Regulations; USS PORTLAND Commissioning, Portland,

OR

(a) *Regulated area.* The following area is designated as a regulated area: All navigable waters of the Willamette River within 500 yards of the USS PORTLAND while moored at the Port of Portland Terminal 2, specifically the navigable waters bounded by the following points: 45° 33.34' N, 122° 42.34' W; 45° 33.12' N, 122° 42.51' W; 45° 32.71' N, 122° 41.37' W; and 45° 32.58' N, 122° 41.54' W.

(b) *Special local regulations.* (1) The Coast Guard may patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (PATCOM). PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM." Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

(2) Entrance into the regulated area is prohibited unless authorized by the PATCOM. The PATCOM may control the movement of all vessels in the regulated area. When hailed or signaled to stop by an official patrol vessel, a vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a

lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(3) All vessels permitted to transit the regulated area must maintain a separation of at least 100 yards away from the USS PORTLAND.

(c) *Enforcement period.* This regulated area is subject to enforcement from 11:59 p.m. on April 14, 2018 to 11:59 p.m. on April 23, 2018.

D. G. Throop,

RADM, U.S. Coast Guard,

Commander, Thirteenth Coast Guard District

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